

9 FAM 40.2 NOTES

(TL:VISA-651; 08-31-2004)

(Office of Origin: CA/VO/L/R)

9 FAM 40.2 N1 PROCESSING VISA APPLICATIONS FOR ALIENS WHO MAY HAVE A CLAIM TO U.S. CITIZENSHIP

(TL:VISA-651; 08-31-2004)

- a. Although a consular officer may not issue a visa to an individual who has been determined to be a U.S. citizen, if a nonimmigrant visa applicant has a possible claim to U.S. citizenship but is unable or unwilling to obtain documents to establish that status, as determined by the post's citizenship and passport officer, the visa officer may presume that the applicant is an "alien" pursuing a nonimmigrant visa application. If the presumed alien is found eligible to receive the visa for which application was made, the visa may be issued prior to the final determination of citizenship status.
- b. If an immigrant visa applicant has a possible claim to U.S. citizenship, the post's citizenship and passport officer must resolve the citizenship issue before the visa officer may take final action on the visa application. [See also 9 FAM 42.12 N4 (2)(b) and 9 FAM 42.71 N5.]

9 FAM 40.2 N2 CHILD BORN IN THE UNITED STATES TO ALIENS ON OFFICIAL ASSIGNMENT

(TL:VISA-409; 05-16-2002)

A child born in the United States to alien parents who are in the United States on assignment for a foreign government is considered to be a U.S. citizen, except a child born to alien parents who at the time of the child's birth were "not subject to the jurisdiction of the United States", such as ambassadors, envoys, ministers and other persons as set forth in 7 FAM 1116-2.2. Whether any claim to citizenship exists in doubtful cases should be determined by the post's citizenship and passport officer.

9 FAM 40.2 N3 APPLICATIONS FOR VISAS FOR CERTAIN DUAL NATIONAL CHILDREN

(TL:VISA-651; 08-31-2004)

The consular officer should advise parents who apply for visas for dual national children that regulations prohibit the issuance of a visa or other documentation to a U.S. citizen or national for entry into the United States as an alien. The children of foreign government officials, however, may use their foreign passport for entry into the United States. After the U.S. citizenship of a child has been determined by a citizenship officer, the consular officer may, to avoid delay or difficulty, give a written statement to the parents for presentation to carriers or immigration officials. The statement should make clear that the bearer of the foreign passport is a dual national child of a foreign government official or employee who is traveling to the United States on official business and as such may enter the United States on the foreign passport as an exception to the provisions of INA 215(b) regarding valid passport requirement. A child under 12 years of age who is included in the passport of an alien parent in an official capacity may be admitted if evidence of U.S. citizenship is presented at the time of entry. A determination of the child's citizenship should be made by citizenship officer prior to departure from a foreign country and the parent should be instructed to have evidence of such citizenship available for inspection by the admitting *Department of Homeland Security* officer.